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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

CLARENCE MCNAIR,

Plaintiff,

v.

DAVID VEST, *et al.*,

Defendants.

Case No. 3:18-cv-00451-RCJ-CBC

ORDER

**I. DISCUSSION**

On August 13, 2019, the Court issued a screening order permitting the action to proceed against Defendant Vest on the excessive force claim and on the portion of the retaliation claim based on the alleged retaliation in Plaintiff's food and face. (ECF No. 4 at 10). The Court also dismissed Plaintiff's ADA claim without prejudice and with leave to amend. (*Id.*) The Court granted Plaintiff 30 days from the date of that order to file an amended complaint curing the deficiencies of the ADA claim. (*Id.* at 10-11). The Court specifically stated that if Plaintiff chose not to file an amended complaint, the action would proceed against Defendant Vest on the excessive force claim and on the portion of the retaliation claim based on the alleged retaliation in Plaintiff's food and face. Plaintiff has not filed an amended complaint, so this action shall proceed on those claims.

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1       **II.       CONCLUSION**

2               For the foregoing reasons, IT IS ORDERED that, pursuant to the Court's screening  
3 order (ECF No. 4), this action shall proceed against Defendant Vest on the excessive  
4 force claim and on the portion of the retaliation claim based on the alleged retaliation in  
5 Plaintiff's food and face.

6               IT IS FURTHER ORDERED that given the nature of the claim(s) that the Court has  
7 permitted to proceed, this action is STAYED for ninety (90) days to allow Plaintiff and  
8 Defendant(s) an opportunity to settle their dispute before the \$350.00 filing fee is paid, an  
9 answer is filed, or the discovery process begins. During this ninety-day stay period, no  
10 other pleadings or papers shall be filed in this case, and the parties shall not engage in  
11 any discovery. The Court will refer this case to the Court's Inmate Early Mediation  
12 Program, and the Court will enter a subsequent order. Regardless, on or before ninety  
13 (90) days from the date this order is entered, the Office of the Attorney General shall file  
14 the report form attached to this order regarding the results of the 90-day stay, even if a  
15 stipulation for dismissal is entered prior to the end of the 90-day stay. If the parties  
16 proceed with this action, the Court will then issue an order setting a date for Defendants  
17 to file an answer or other response. Following the filing of an answer, the Court will issue  
18 a scheduling order setting discovery and dispositive motion deadlines.

19               IT IS FURTHER ORDERED that "settlement" may or may not include payment of  
20 money damages. It also may or may not include an agreement to resolve Plaintiff's issues  
21 differently. A compromise agreement is one in which neither party is completely satisfied  
22 with the result, but both have given something up and both have obtained something in  
23 return.

24               IT IS FURTHER ORDERED that if the case does not settle, Plaintiff will be required  
25 to pay the full \$350.00 filing fee. This fee cannot be waived. If Plaintiff is allowed to  
26 proceed in forma pauperis, the fee will be paid in installments from his prison trust  
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1 account. 28 U.S.C. § 1915(b). If Plaintiff is not allowed to proceed in forma pauperis, the  
2 \$350.00 will be due immediately.

3 IT IS FURTHER ORDERED that if any party seeks to have this case excluded from  
4 the inmate mediation program, that party shall file a "motion to exclude case from  
5 mediation" on or before twenty-one (21) days from the date of this order. The responding  
6 party shall have seven (7) days to file a response. No reply shall be filed. Thereafter, the  
7 Court will issue an order, set the matter for hearing, or both.

8 IT IS FURTHER ORDERED that the Clerk of the Court shall electronically SERVE  
9 a copy of this order, the original screening order (ECF No. 4) and a copy of Plaintiff's  
10 complaint (ECF No. 5) on the Office of the Attorney General of the State of Nevada, by  
11 adding the Attorney General of the State of Nevada to the docket sheet. This does not  
12 indicate acceptance of service.

13 IT IS FURTHER ORDERED that the Attorney General's Office shall advise the  
14 Court within twenty-one (21) days of the date of the entry of this order whether it will enter  
15 a limited notice of appearance on behalf of Defendants for the purpose of settlement. No  
16 defenses or objections, including lack of service, shall be waived as a result of the filing  
17 of the limited notice of appearance.

18 DATED: October 10, 2019.

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UNITED STATES MAGISTRATE JUDGE  
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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

<p>Plaintiff,</p> <p>v.</p> <p>, et al.,</p> <p>Defendants.</p>	<p>Case No.</p> <p>REPORT OF ATTORNEY GENERAL RE: RESULTS OF 90-DAY STAY</p>
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**NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL SHALL FILE THIS FORM.  
THE INMATE PLAINTIFF SHALL NOT FILE THIS FORM.**

On \_\_\_\_\_ [*the date of the issuance of the screening order*], the Court issued its screening order stating that it had conducted its screening pursuant to 28 U.S.C. § 1915A, and that certain specified claims in this case would proceed. The Court ordered the Office of the Attorney General of the State of Nevada to file a report ninety (90) days after the date of the entry of the Court's screening order to indicate the status of the case at the end of the 90-day stay. By filing this form, the Office of the Attorney General hereby complies.

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## REPORT FORM

[Identify which of the following two situations (identified in bold type) describes the case, and follow the instructions corresponding to the proper statement.]

**Situation One: Mediated Case: The case was assigned to mediation by a court-appointed mediator during the 90-day stay.** [If this statement is accurate, check **ONE** of the six statements below and fill in any additional information as required, then proceed to the signature block.]

\_\_\_\_\_ A mediation session with a court-appointed mediator was held on \_\_\_\_\_ [enter date], and as of this date, the parties have reached a settlement (even if paperwork to memorialize the settlement remains to be completed). (If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in the case until a specified date upon which they will file a stipulation of dismissal.)

\_\_\_\_\_ A mediation session with a court-appointed mediator was held on \_\_\_\_\_ [enter date], and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

\_\_\_\_\_ No mediation session with a court-appointed mediator was held during the 90-day stay, but the parties have nevertheless settled the case. (If this box is checked, the parties are on notice that they must SEPARATELY file a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)

\_\_\_\_\_ No mediation session with a court-appointed mediator was held during the 90-day stay, but one is currently scheduled for \_\_\_\_\_ [enter date].

\_\_\_\_\_ No mediation session with a court-appointed mediator was held during the 90-day stay, and as of this date, no date certain has been scheduled for such a session.

\_\_\_\_\_ None of the above five statements describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

\* \* \* \* \*

**Situation Two: Informal Settlement Discussions Case: The case was NOT assigned to mediation with a court-appointed mediator during the 90-day stay; rather, the parties were encouraged to engage in informal settlement negotiations.** [If this statement is accurate, check **ONE** of the four statements below and fill in any additional information as required, then proceed to the signature block.]

\_\_\_\_\_ The parties engaged in settlement discussions and as of this date, the parties have reached a settlement (even if the paperwork to memorialize the settlement remains to be completed). (If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the Court continue the stay in this case until a specified date upon which they will file a stipulation of dismissal.)

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\_\_\_\_\_ The parties engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

\_\_\_\_\_ The parties have not engaged in settlement discussions and as of this date, the parties have not reached a settlement. The Office of the Attorney General therefore informs the Court of its intent to proceed with this action.

\_\_\_\_\_ None of the above three statements fully describes the status of this case. Contemporaneously with the filing of this report, the Office of the Attorney General of the State of Nevada is filing a separate document detailing the status of this case.

Submitted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by:

Attorney Name: _____	_____
Print	Signature

Address: _____	Phone: _____
_____	_____
	Email: _____
	_____